



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,497	10/07/2004	Shunji Hayashi	Q84102	1554
65565	7590	03/16/2010	EXAMINER	
SUGHRUE-265550			BADR, HAMID R	
2100 PENNSYLVANIA AVE. NW				
WASHINGTON, DC 20037-3213				
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			03/16/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

SUGHRUE265550@SUGHRUE.COM
USPTO@SUGHRUE.COM
PPROCESSING@SUGHRUE.COM

Advisory Action

Applicants' amendment after final rejection filed 2/11/2010 is acknowledged.

The amendment filed after the final rejection is entered for appeal purposes.

No claims are allowed.

Response to Arguments

1. The Declaration by Mr. Mitsuro Matsuo has been thoroughly reviewed and considered. The points raised by Mr. Matsuo are addressed below.

a. Timing of addition of yeast extract

The yeast extract is being added to the milk in step 1 and before formation of curd in step 2.

It should be realized that the addition of adjuncts to milk always takes place before formation of the curd. Therefore, it is a routine practice to add the yeast extract before formation of the curd. It is also noted that yeast extract is added as a nutrient source for the starter culture. Please see the disclosure by the German reference in the Final action.

b. Incubation of the curd

Applicant is emphasizing that the curd is incubated without cooling after molding and pressing.

That is a normal practice in the art as well. The cheese is pressed overnight at ambient temperature after which it is vacuum packed. The ambient temperature would be between about 20-30C.

Art Unit: 1794

c. Viable cell count overtime

Applicant is stating that after 6 months of storage at 10C or less, the live bacterial count is in the ten million per gram range.

Please see Cardiner et al. 1998 (R1) for bacterial counts of their product. After 8.5 months at 8C, the count is in the ten to hundred million per gram range.

It therefore appears that there is no inventive step in the presently claimed invention.

The inclusion of *L. gasseri* in cheese is even disclosed by Germond et al. (WO 0188150; R4). Please see paragraph 19 of the Final rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr
Examiner
Art Unit 1794

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1794